Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1979

NO. A-955

79-1972

DIAMOND PARKING INC.,

Appellant,

v.

CITY OF SEATTLE,

Respondent.

Upon Appeal from the Judgment of
THE SUPREME COURT OF WASHINGTON

JURISDICTIONAL STATEMENT OF DIAMOND PARKING INC.

DIAMOND & SYLVESTER
By LYLE L. IVERSEN

Attorneys for Appellant
Diamond Parking Inc.

Office and PO Address:
400 Hoge Building
Seattle, Washington 98104

Telephone:
(206) 623-1330

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This is an appeal from the Opinion of the Supreme Court of the State of Washington entered November 21, 1979 and reported in 92 Wn.2d 905, _____ P.2d _____ (1979).

This case, in both the trial court and the Washington Supreme Court, was consolidated with the case of Ackerley Communication, Inc. and Maronco,

Inc. v. City of Seattle, and one opinion was written by the Washington Supreme Court covering the consolidated cases. Order Denying Motion for Reconsideration was entered by the Washington Supreme Court on February 14, 1980.

Notice of appeal to this Court was filed in the Washington Supreme Court May 5, 1980.

Copy of the Washington Supreme Court Opinion from which appeal is taken is attached to the application of Ackerley Communications, Inc., a companion appeal to this one.

GROUNDS FOR INVOKING JURISDICTION

This appellant adopts the Jurisdictional Statement filed by Ackerley Communications, Inc. in Cause No. A-938 in this Court under the heading "Jurisdiction."

This appeal and the appeal of Ackerley Communications, Inc. involve identical questions and it is requested that, pursuant to Supreme Court Rule 15, paragraph 3, the Jurisdictional Statement filed

by Ackerley Communications, Inc. serve as the Jurisdictional Statement for this appeal.

Jurisdiction of this Court is invoked for the reason that the Washington Supreme Court based its decision upon an erroneous construction of Title 23 United States Code § 131, and Title 92 United States Code § 4651. This case further involves free speech and free press under the First and Fourteenth Amendments to the United States Constitution. The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by 28 USC § 1257(2).

QUESTIONS PRESENTED

Reference is made to the Jurisdictional Statement filed by Ackerley Communications, Inc. in the companion appeal with reference to the questions presented, and that portion of the Ackerley Communications, Inc. Jurisdictional Statement is adopted for this appeal.

STATEMENT OF THE CASE

Diamond Parking Inc. maintains three signs in the City of Seattle on its own property, barely and fleetingly visible from interstate highways, and located in commercial and industrial areas.

The signs advise the public of activites carried-on on those premises, one being the sign on a parking lot on which a gasoline station is located, bearing the word "Texaco."

The other two signs are located on a Diamond Parking lot and advise that Budget cars park free on that lot.

All of the signs were erected pursuant to building permits issued by the City of Seattle long before the anti-billboard ordinance was enacted.

The City of Seattle adopted an ordinance requiring removal of signs visible from interstate highways, without compensation.

The Washington legislature enacted a statute at its first extraordinary session in 1977, Revised Code of Washington § 47.42.107, copy of which is appended to the Jurisdictional Statement of

Ackerley Communications, Inc., which required cities to make compensation for billboards required to be removed.

The Washington statute with respect to the requirement for compensation for the removal of signs is similar in its provisions to the provision of 23 USC § 131.

There was no trial in this case but the matter was decided on the basis of a motion for summary judgment made by Diamond Parking Inc. and Ackerley Communications, Inc.

At a trial Diamond Parking Inc. would show that the signs in question, by reason of their type, the permits under which they were constructed and the function which they serve, are exempt from the City Ordinance.

The Washington Supreme Court gratuitously passed upon the constitutional questions affecting the signs and the legislation which were not necessary for the decision and which foreclosed a trial on the merits.

FEDERAL QUESTIONS ARE SUBSTANTIAL

This case involves some fundamental rights of Diamond Parking Inc. under the Federal Constitution, notably the rights of freedom of speech under the First Amendment and equal protection of the laws under the Fourteenth Amendment by reason of the fact that other signs along the same highways if ordered removed under state law would have to be compensated for, whereas when ordered removed under the City ordinance for the same reason, namely proximity to the interstate highway, signs are required to be removed without compensation.

This appeal also involves the meaning of a federal statute, 23 USC § 131, which the Washington Supreme Court construed as compelling the result it arrived at.

This construction was contrary to the construction given by the California Supreme Court in Metromedia v. City of San Diego, _____ Cal.3d _____, 592 P.2d 728 (1979).

This appellant adopts in its entirety the Jurisdictional Statement filed in Cause No. A-038, Ackerley Communications, Inc. v. City of Seattle.

This case presents issues which should be decided by this Court at an early date. The federal questions involved are substantial and extremely important.

Respectfully submitted,

DIAMOND & SYLVESTER
By LYLE L. IVERSEN

Attorneys for Appellant
Diamond Parking Inc.